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Court of Appeals

COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
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FRANKFORT, KENTUCKY 40601

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District Court

JOSEPH H. ECKERT
Circuit Court

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JUDICIAL ETHICS OPINION JE-48

Formal

QUESTION: Must a judge disqualify himself in a proceeding in which his first cousin is acting as a lawyer?

ANSWER: No, unless there are special circumstances which would raise a reasonable question of his impartiality.

REFERENCES: SCR 4.300, Canon 3C(1)(d)(ii) and Canon 3C(3); KRS 26A.015; Wells v. Walter, Ky., 501 S.W.2d 259 (1973); Thode, Reporter's Notes to Code of Judicial Conduct (ABA 1973).

OPINION: (January 1984)

Canon 3C of SCR 4.300, The Code of Judicial Conduct, reads in relevant part as follows:

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

...

- (d) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

...

- (ii) is acting as a lawyer in the proceeding;

...

- (3) For the purpose of this section:

- (a) the degree of relationship is calculated according to the civil law system;

...

As described in 46 Am. Jur.2d, Judges, Section 142, the civil law system requires counting up from one person to the common ancestor, then down to the other person. Thus, the first degree includes parents and children of the judge; the second degree includes his grandparents and his grandchildren. The grandparents' children (the judge's aunts and uncles) are third degree; and their children (the judge's first cousins) are the fourth degree.

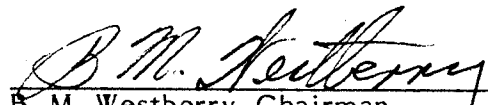
Stated another way, the official American Bar Association Commentary to Canon 3 states that:

The third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify him if a cousin were a party or lawyer in the proceeding. (Thode, Reporter's Notes to Code of Judicial Conduct (ABA 1973) at 16.)

According to the civil law method of reckoning, then, first cousins are outside the scope of the automatic disqualification mandate of Canon 3C(1)(d). We so hold.

We are aware of *Wells v. Walter*, Ky., 501 S.W.2d 259 (1973), holding that "a first cousin by blood or marriage is of sufficiently close kin to require disqualification." We think that case was, in effect, overruled by the subsequent adoption (1977, effective 1/1/78) by the Kentucky Supreme Court of SCR 4.300, the Code of Judicial Conduct, with its mandate to use the civil law method of computing kinship. It should also be noted that KRS 26A.015 (enacted 1976), which is nearly a verbatim rendition of the disqualification requirements of Canon 3, does not specify any method of computation.

It must be pointed out that special circumstances, such as a near-sibling relationship between the judge and his cousin, may require disqualification under the first clause of Canon 3. If the relationship is such that the judge's impartiality "might reasonably be questioned," then he should step aside. Precise guidelines for this type of situation cannot be drawn, but we think that the word "reasonably" is crucial here. As stated by Thode, *supra* at 60, "Any conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge's 'impartiality might reasonably be questioned' is a basis for the judge's disqualification." Canon 3D provides for remittal of disqualification under Canon 3C(1)(c) and (d).


B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary